

### **REMARKS**

Claims 5-8 are now pending in the present application. The election of Group II – Claims 5-8 is hereby affirmed. Claims 1-4 and 9-20 have been withdrawn pursuant to a restriction requirement. Additionally, Claim 5 has been amended.

Applicants have carefully studied the outstanding Office Action. The present Response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of this application are respectfully requested. No new matter has been added by any of the amendments to the specification. Applicants respectfully request reconsideration and withdrawal of the Examiner's rejections in view of the foregoing amendments and following remarks.

### **PROVISIONAL REJECTIONS – DOUBLE PATENTING**

Examiner has provisionally rejected claims 5-8 under the judicially created doctrine of double patenting over claims 1-7 of co-assigned U.S. Patent No. 6,722,106 and claims 1-8 of co-assigned U.S. Patent No. 6,729,109. While Applicants would dispute Examiner's characterization that the variations and differences between the subject invention and the '106 and '109 patents would have been obvious to one skilled in the art, in order to expedite the prosecution of the instant Application, Applicants have submitted a terminal disclaimer to obviate Examiner's assertion of double patenting. Therefore, Applicants respectfully request the provisional rejections be withdrawn.

### **CLAIM REJECTIONS – 35 U.S.C. §103(A)**

#### **Claims 5-8**

The Examiner rejected claims 5-8 under 35 U.S.C. §103(a), as being unpatentable over Tsurta (U.S. Patent No. 6,145,282) or Japanese Patent 2,191,159 in view of Stolmeier (US Patent No. 5,564,259) or Terminella (US 6,047,521) or Admitted Prior Art. The Examiner has stated that:

The Tsurta ['282] and Japanese ['159] patents show the forming of a tube on a vertical form-fill-seal machine, longitudinally sealing the tube (20 and 7, respectively), forming longitudinal creases

(31 and 6, respectively), transversally filling the tube, transversely sealing the tube (1510 and 5, respectively), filling the tube, transversally sealing the tube above the product and cutting the tube into individual packages. These patents lack the use of external reclose tapes. The patents to Stolmeier ['259] and Terminella ['521] show the forming of packages on a vertical form-fill-seal machine and attaching a reclose tape (18-52, respectively) to the outside of the film. The instant specification also sets forth in the specification on page 32 that the tapes are conventional. It would have been obvious to one skilled in the art to provide the packages of Tsurta ['282] or the Japanese ['159] patent with reclose tapes as taught by Stolmeier ['259], Terminella ['521] or the Admitted Prior Art allow easy access to the contents.

This rejection is respectfully traversed. Claim 5 has been amended. The prior art cited by Examiner does not, either alone or in combination, teach or disclose every element of Applicant's invention. Unlike the device of the present invention, neither the Tsurta '282 nor the Japanese '159 patent teach or suggest attaching an adhesive reclose strip to a surface of an advancing sheet of packaging film so that when the film is formed into a tube, the reclose strip is attached to the exterior of the film tube. Moreover, the Tsurta '282 and Japanese '159 patents include additional steps for manufacturing their respective bags. Indeed, the method of Tsurta '282 explicitly teaches away from the method of the Claim 5. For example, Tsurta '282 includes a longitudinal heat sealing step performed by a bottom sealing mechanism 40 after a fold is formed in the film 1. (see Figs. 1, 5, & 6) In contrast, the subject invention does not require any such sealing step with regard to the gusset region, and explicitly specifies that the vertical crease is heat-sealed at only the first and second transverse seals.

In addition neither the Tsurta '521 nor the Japanese '159 patents appear to teach or suggest orienting the graphics of the packaging film perpendicular to the direction of travel of said film, as required by the subject invention.

With regard to the Terminella '521 reference, in contrast to the adhesive reclose strip 140 of the present invention, zipper strip 52 is a mechanical reclose strip. Moreover, in further contrast to the subject invention, when formed in a tube the Terminella '521 zipper strip 52 is on the interior of the resulting package.

The method of the Stolmeier '259 patent contrasts distinctly with the method of the subject invention. First, Stolmeier '259 neither teaches nor suggests forming a crease in the resulting package, as taught in the subject invention. Neither does Stolmeier '259 teach or suggest orienting the graphics of the packaging film perpendicular to the direction of travel of

said film, as required by the subject invention. Finally, in contrast to the adhesive reclose strip 140 of the subject invention, Stolmeier '259 teaches attaching a mechanical zipper closure member 18 (see Figs. 1, 5, & 6, column 4, lines 8-18). Thus, in marked contrast to the resulting package of the subject invention, the resulting Stolmeier '259 package is meant to be opened along the mechanical zipper closure. Moreover, in further contrast to the method of the subject invention, the mechanical zipper closure is attached to the packaging film after the forming of the packaging film into a tube and after forming the longitudinal seal.

While it is true that the reclose strip 140 used in the present invention may be of any conventional construction, this is not to say that the method embodied in the subject invention is conventional. Nor does the mere existence of such adhesive reclose strips suggest or teach the method of the subject invention.


It is well established that as a part Examiner's burden to establish a *prima facie* case of obviousness, Examiner is required to show that the referenced teachings "appear to have suggested the claim subject matter." *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143, 147 (C.C.P.A. 1976). As stated by the Federal Circuit, "Obviousness cannot be established by combining teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination." *In re Geiger*, 815 F.2d 683, 2 USPQ 2d 1276, 1278 (Fed. Cir. 1987). Neither Tsurta '282, the Japanese '159 patent, nor Stolmeier '259, Terminella '521 or the Admitted Prior Art, either alone or in combination, teach or disclose every element of Applicant's invention. Examiner's failure to provide the necessary suggestion or motivation for the combination of Tsurta '282 or the Japanese '159 patent, in view of Stolmeier '259, or Terminella '521 or the Admitted Prior Art creates a presumption that the combination selected by Examiner to support the obviousness rejection is based on hindsight. Examiner has not established a *prima facie* case of obviousness, and the rejection of Claims 5-8 should be withdrawn.

### CONCLUSION

Applicant has adopted the Examiner's suggestions where applicable and believes the claims are in condition for allowance. It is respectfully urged that the subject application is patentable over references cited by Examiner and is now in condition for allowance. Applicant requests consideration of the application and allowance of the claims. If there are any outstanding issues that the Examiner feels may be resolved by way of a telephone conference, the Examiner is cordially invited to contact Jeffrey G. Degenfelder at 972.367.2001.

The Commissioner is hereby authorized to charge any additional payments that may be due for additional claims to Deposit Account 50-0392.

Respectfully submitted,

By:   
Jeffrey G. Degenfelder  
Registration No. 44,647  
Attorney for Applicants

Date: September 28, 2005

CARSTENS & CAHOON, LLP  
P.O. Box 802334  
Dallas, TX 75380  
(972) 367-2001 Telephone  
(972) 367-2002 Facsimile